Paper No. 34

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDWARD J. PITTARELLI

Appeal No. 2003-0813
Application No. 08/771,885

ON BRIEF

Before KRASS, JERRY SMITH and FLEMING, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 21-26, 28 and 29.

The invention is directed to a system for providing public information and services utilizing stand-alone computers, in public kiosks, and central servers to permit users to interact with remote information and service providers. Information that is available at the local kiosk, in local memory, is provided to a user without accessing the

centralized server. Information that is not available locally, may be obtained by the user from a centralized server through a wide area communications network connected between the centralized server and the public kiosk.

Representative independent claim 21 is reproduced as follows:

> 21. An information distribution system comprising a plurality of information systems associated with respective ones of different services,
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> at least one centralized server, and
>
> a plurality of public kiosks disposed in different public places each operable using configuration and interface information stored in a locally accessible associated memory without accessing said centralized server for interacting with a user to permit the user to select one of said different services, and operable, responsive to a user entering such a selection, for unloading from said associated memory information associated with the selected service and presenting the unloaded information to said user and operable, responsive to the user entering a particular request, for establishing a multimedia-video telecommunications connection between the user and a representative of the selected one of said different services,
>
> and further operable for forwarding the user's selection to said at least one centralized server if said information is not stored in said memory, each of said public kiosks being directly connected to said at least one centralized server via a wide area communications network, and wherein
>
> said at least one centralized server being operable for then downloading via said network information to the kiosk at which said user is located for storage thereat and presentation to the user and for periodically downloading to each of said kiosks for storage thereat changes to user selectable information associated with a respective one of said different services.

The examiner relies on the following references:

Ahlin et al. (Ahlin)	5,321,840	Jun. 14, 1994
Katz[1]	5,495,284	Feb. 27, 1996 (filed Nov. 17, 1993)
Kawan et al. (Kawan)[2]	5,572,572	Nov. 05, 1996 (filed Mar. 16, 1994)

Claims 21-26, 28 and 29 stand rejected under 35 U.S.C. §103. As evidence of obviousness, the examiner cites Ahlin with regard to claims 21-26 and 28, adding Katz with regard to claim 29.

Reference is made to the brief and answer for the respective positions of appellant and the examiner.

OPINION

At the outset, we note that, in accordance with appellant's grouping of the claims at page 3 of the brief, all claims will stand or fall together. Accordingly, we will focus on independent claim 21.

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[1]While the examiner refers to Paper No. 24 for the rejections, and Paper No. 24 states a rejection of claim 29 over Ahlin and Katz, the answer does not refer to Katz nor does it explicitly repeat this rejection. However, since reference is made to Paper No. 24, and appellant apparently agrees that claim 29 stands rejected under 35 U.S.C. §103 over Ahlin and Katz (note pages 3-4 of the brief), we will treat the rejection of claim 29 on this ground as outstanding on appeal.

[2]While Kawan is not part of the examiner's statement of rejection, it is incorporated by reference in Ahlin, at column 2, lines 1-8, by referring to "Ser. No. 260, 832, filed Oct. 21, 1988," which is a parent application of Kawan. In any event, both appellant and the examiner understand Kawan as forming part of the rejection and we will treat it as such.

In our previous decision of February 6, 2001, we affirmed the examiner's decision rejecting claim 21 under 35 U.S.C. §103 over Ahlin. In the instant case, claim 21 has been amended to include two additional limitations. The claim now recites that each public kiosk is operable using "configuration and interface information stored in a locally accessible associated memory without accessing said centralized server." It also recites that when desired information is not stored in the local memory, the user's selection is forwarded to a centralized server, wherein each of the public kiosks is directly connected to at least one centralized server via "a wide area communications network."

Appellant now argues that neither Ahlin nor Kawan teaches or suggests using "configuration and interface information stored in a locally accessible associated memory without accessing said centralized server" because these references need to download operating software to the local computer, e.g., to the telephone-computer in Kawan. Appellant reasons that since everything needs to be downloaded, this is in contrast to the instant claimed invention which recites information being stored in a locally accessible associated memory "without accessing said centralized server."

We disagree. While it may be that Ahlin and Kawan download necessary information, e.g., application program pages, from a centralized server, we note, as did

the examiner, that appellant also needs to download information which is not available in local memory, from a centralized server. Once the application program, in Ahlin and Kawan, is downloaded, the required information is now in local memory and the configuration and interface information in the references is now stored in a locally accessible associated memory "without accessing said centralized server," as claimed. It appears to us that interpretation of the instant claim language is a matter of "when" one is looking at the status of the system. If the required information is already located at the local memory, then that information is accessible "without accessing said centralized server." However, if the information is not available at the local memory, then the required information must be downloaded from the centralized server. For example, reference is made to column 7, lines 23-50, of Ahlin, wherein there is a description of a host computer that downloads a series of application program pages to a home terminal. Once the home terminal has the program, the program is operated from the home terminal and it is no longer necessary to download the program.

Appellant further argues that the limitation of a "wide area communications network" distinguishes over the applied references. In particular, appellant argues that since Kawan indicates that the telephone-computer therein delivers services "through an ordinary telephone instrument via conventional telephone lines..." (abstract), such

"conventional telephone lines" cannot constitute the claimed direct connection to "a wide area communications network." Appellant argues that the "differences between communication via telephone lines and a WAN are significant, relating to speed, protocol, etc." (brief-page 6) and that while many systems can use both types of communication systems, Kawan "specifically chose not to use WAN" (brief-page 6) in order to preserve the appearance of a telephone system.

The examiner's response is to refer us to an office action of June 14, 2001 (Paper No. 21) and to argue that there is no functional difference between the claimed connection and the reference system connection to a network because Ahlin/Kawan "performs exactly the same function as the claimed in terms being connected to the network to perform the claimed function. It was commonly known at the time of invention that one of ordinary skill in the art can easily connected via phone line or any other known network connection means" (sic, answer-page 7).

We will sustain the examiner's position. The examiner should have cited a specific reference to buttress the finding that the use of a WAN would be a design choice and/or that the skilled artisan would have known about employing many different types of interconnection networks, including telephone connections and WAN. However, under the circumstances, we will not hold the examiner's lack of a reference to be reversible error.

Basically, the examiner is taking Official notice that the use of WAN for connecting computers was well known at the time of the instant invention and that its use in place of telephone connections, or other types of connections, would have been obvious to the skilled artisan. This appears, to us, to be a reasonable position which appellant was free to challenge. Yet, appellant does not challenge this finding by the examiner, arguing merely that Kawan chooses to employ a telephone connection rather than a WAN, but does not address the question of the obviousness of using a WAN.

Merely because Kawan chooses to use a conventional telephone connection is not a valid reason, in our view, for appellant to contend that it would not have been obvious to use a WAN, instead, if the skilled artisan wished to achieve the advantages afforded by a WAN. Appellant also points out the differences between telephone lines and WAN, e.g., speed, protocol, etc. but does not dispute that the differences would have been familiar to the skilled artisan at the time of the instant invention.

Appellant does point out that since Kawan wants to preserve the look of a telephone system, the artisan would not have chosen to use a WAN in Kawan's system. We are unpersuaded by this argument. The preservation of the look of a normal telephone system would not preclude the use of a WAN, since the specific type of connection would be invisible to a casual observer. Moreover, we note that appellant's argument is directly solely to Kawan, even though Ahlin is also applied in the rejection and, in fact, is the primary reference applied.

Since none of appellant's arguments are found to overcome what we view as a prima facie case of obviousness established by the examiner, we will sustain the rejection of claims 21-26, 28 and 29 under 35 U.S.C. §103.

The examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

ERROL A. KRASS Administrative Patent Judge	)
JERRY SMITH Administrative Patent Judge	) BOARD OF PATENT) APPEALS) AND) INTERFERENCES
MICHAEL R. FLEMING Administrative Patent Judge	)

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